

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

75-1010^B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee,

-against-

GABRIEL GALINDO-VALDEZ,

Appellant.
-----X

Docket No. 75-1010

BRIEF FOR APPELLANT
PURSUANT TO
ANDERS v. CALIFORNIA

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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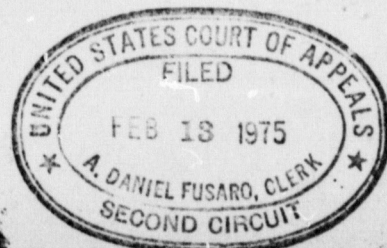


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UNITED STATES OF AMERICA,
Appellee,
-against-
GABRIEL GALINDO-VALDEZ,
Appellant.

BRIEF FOR APPELLANT
PURSUANT TO
ANDERS V. CALIFORNIA

QUESTION PRESENTED

Whether there are any non-frivolous issues to be presented to this Court for review.

STATEMENT PURSUANT TO RULE 28(3)

Preliminary Statement

This appeal is from an order and judgment of the United States District Court for the Eastern District of New York (The Honorable Jacob Mishler) entered on December 20, 1974, finding appellant to be in violation of probation and executing the sentence of two years' imprisonment imposed on March 1, 1974.

By an order dated January 6, 1975, this Court continued The Legal Aid Society, Federal Defender Services Unit, as counsel on appeal, pursuant to the Criminal Justice Act.

Statement of Facts

Appellant was charged in a one-count indictment with illegal entry into the United States, in violation of 8 U.S.C. §1326. After a trial before a jury, appellant was found guilty, and, on March 1, 1974, was sentenced to a two-year term of imprisonment and a fine of \$1,000.. Execution of the term of imprisonment was suspended and appellant was placed on unsupervised probation for a period of five years. A special condition of probation was that appellant be deported and not return to the United States or its territories during the period of probation. On May 28, 1974, this Court affirmed without opinion the judgment of conviction.

On May 1, 1974, the United States Probation Department

advised Judge Mishler that appellant had entered the United States illegally and that he was taken into custody in Arizona. The Judge was further advised that appellant had been convicted of entry without inspection, in violation of 8 U.S.C. §1325, in the Federal District Court in Arizona, and the Probation Department requested that a bench warrant be issued.*

On November 22, 1974, the Government requested that appellant be psychiatrically examined at Kings County Hospital pursuant to 28 U.S.C. §4244, and Judge Mishler directed that such an examination be conducted.

A hearing on the charge of violation of probation was conducted on December 20, 1974. It was the defense position that appellant did not voluntarily re-enter the country, but that he had been returned to the United States by Mexican immigration authorities because he arrived in Mexico with no identification papers.

Counsel stated that he would not contest the psychiatric report which found appellant competent. It was stipulated that on March 21, 1974, appellant was deported from the United States and that he arrived in Mexico City on that day.

Stephen Norman, a United States Border Patrol officer, testified that on April 8, 1974, at about 9:30 p.m., he saw appellant being questioned by a Customs Patrol officer in Nogales, Arizona, about fifteen feet from the Mexican border.

*See Document #14 to the record on appeal.

Norman searched appellant, and found in his pocket a document indicating that appellant had been previously deported from New York City to Mexico City. The document, as translated into the record, stated:

The following document will be given to Mr. Gabriel Galindo-Valdez, whose photograph appears right here for better and easy identification, who is returning to Mexico returned by the Immigration Service of the United States through their office in New York, New York. Mr. Gabriel Valdez came to this county by an unknown place on the frontier after April 2nd, 1973, having been deported previously through Calexico, California. He has remained in the United States since the second entry illegally by which the Immigration authorities began a deportation process that has given rise to the present solution. He has been identified as having been in the military national service as indicated by Alvron Abrigon D.F. the 1st of March, 1972, No. 8211643. In such document it appears he was born the 24th of February, 1953, in Mexico D.F. His parents were Gabriel Galindo and Serafina Valdez. I will be very grateful if you will permit him to return to the national territory.

(14-15).

It was stipulated that the document had been prepared by the Mexican General Consul's office, and the document was signed "Antonio S. Gavito, Consejero."

Norman testified that anyone deported from Mexico to the United States is delivered to the supervisor of the port of entry, and the records are checked to be certain that the individual deported is an American citizen (16*). The Mexican

*Numerals in parentheses refer to pages of the transcript of the hearing of December 20, 1974.

Government gives American border officials a copy of the deportation document, and that document is kept at Nogales, Arizona. Norman checked the records at Nogales for November 1973 through 1974, and found no Mexican deportation document for Galindo-Valdez, (17), the name given by appellant (24).

Appellant testified that he did not have the travel document when he was deported from the United States. He said that when he arrived in Mexico City he was detained by the police (30) because he entered illegally on a deportation charge, and that his name was Spittle.* The Mexican immigration officials showed him the document, but kept it (36). Appellant then was taken by Mexican immigration officials to the Galindo-Valdez family, but the members of that family said he was not Gabriel Galindo-Valdez (31). Several days later, Mexican authorities returned him to the United States Immigration officials (32).

In the immigration file was a document, signed by an Officer Landis and dated March 22, 1974, which read:

I received a call from Mr. Marrotti of Eastern Airlines who advised that the Mexican authorities in Mexico D.F., called him that subject is claiming U.S. citizenship and that unless they can prove otherwise they propose to return him to JFK IA via Eastern. I suggested he notify our JFK

*At his earlier trial before Judge Mishler, appellant's defense to the charge of illegal entry into the United States was that he was an American citizen and his name was Louis Spittle. At this probation violation hearing, he was called to testify under the name of Louis Spittle.

person promptly of this so he can be met. In addition I suggested he call back info concerning FBI number and numbers[,] dates of issuance[,] and consular officers named who issued documents of identity in Calexico and New York City since 197[-] establishing he was previously deported from the United States of America as a Mexican citizen.

(40-41).

The document was introduced to show that when appellant was detained in Mexico he claimed United States citizenship (41).

The Judge then found that appellant had voluntarily re-entered the United States in violation of probation, and revoked probation.

POSSIBLE ISSUES ON APPEAL

I

The evidence produced by the Government showed that a Mexican travel document was issued and that the document stated "it will be given to Gabriel Galindo-Valdez." Testimony by Agent Norman was that the document was found in appellant's pocket. Further, Norman also stated that people deported from Mexico are sent to the border supervisor and that a record of the Mexican deportation order is filed at the Nogales, Arizona, border station. He stated that no document in the name Galindo-Valdez was found from November 1973 through 1974. Based on this evidence, the District Court could find that, notwithstanding appellant's claim to the contrary, appellant was not de-

ported by Mexican authorities, and consequently that he must have entered the United States on his own volition.

Appellant's testimony to the contrary could have been disbelieved by the Judge in his evaluation of credibility, and that is an issue not reviewable by this Court. The memorandum which was part of the immigration file was introduced solely to show that appellant claimed United States citizenship when he was detained in Mexico by the police.

II

The report submitted by the Kings County Hospital psychiatrist after the examination pursuant to 18 U.S.C. §4244 was not challenged by counsel, nor did counsel request another examination. Accordingly, appellant's competence and responsibility were not in issue.

CONCLUSION

For the foregoing reasons, there are no non-frivolous issues in this case to be raised for this Court's review.

Accordingly, The Legal Aid Society, Federal Defender Services Unit, should be relieved as counsel on appeal.

Respectfully submitted,

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Certificate of Service

Jul. 13, 1975

I certify that a copy of this brief and appendix
has been mailed to the United States Attorney for the
Eastern District of New York, and to appellant.

Phyllis M. B. B. B.